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Chairman: Mr. Makarowski (Vice-Chairman) ..... (Sweden)

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In the absence of Mr. Tulbure (Moldova), Mr. Makarowski (Sweden), Vice-Chairman, took the Chair.

The meeting was called to order at 3.05 p.m.

Agenda item 80: Criminal accountability of United Nations officials and experts on mission (*continued*) (A/60/980, A/62/54 and A/62/329)

1. **Mr. Muchemi** (Kenya) said that, although peacekeeping was a noble calling that involved considerable sacrifice, a few individuals had engaged in conduct that had adversely affected its reputation. When anyone involved in a United Nations operation committed a crime, it diminished the trust of local communities without which the operation might not receive the necessary cooperation. His delegation welcomed efforts to study and put in place, by consensus and as a matter of urgency, appropriate mechanisms to address existing legal gaps.

2. As one of the main contributors of personnel both military and non-military, for African peacekeeping operations, his Government took a keen interest in the agenda item and urged delegations to demonstrate flexibility and understanding during the negotiations.

3. **Mr. Tarabrin** (Russian Federation) said that the discussions during the first session of the Ad Hoc Committee showed that there were different points of view on how to address the problem of criminal accountability of United Nations officials and experts on mission. The Ad Hoc Committee should continue studying the issue, which hinged on the question of how to fill jurisdictional gaps. His Government was in favour of drafting a convention based on the outcome of that work.

4. Expanding the scope of the proposed legal regime to cover not only peacekeeping personnel but also staff members on mission of any United Nations department, fund, programme or specialized agency deserved consideration. It might even be advisable to include any person acting on behalf of or under instructions from the Organization. However, military observers not part of national contingents had a special status and should not be covered by the proposed regime; the same was true of civilian police.

5. His delegation had no objection to extending the list of criminal acts to cover not only sexual crimes and crimes against persons but also professional misconduct, economic crimes and crimes against property. It was not necessary to list specific crimes: setting criteria based on levels of punishment would be entirely appropriate.

6. There were some problems with the schema whereby the host country automatically had jurisdiction and another country (such as the offender's country of residence) might prosecute the crime only when the host country was unable to do so. Firstly, it could be assumed in the context of most peacekeeping and other operations that the host country's capacity to effectively assert jurisdiction while ensuring proper legal procedures would be questionable. Secondly, persons travelling to a region or country to fulfil an international mission had a special status; guarantees of their rights should be just as important as concern for the victims of crime. That being the case, it was not obvious to his delegation that the jurisdiction of the host country should have priority, in keeping with traditional principles of criminal law. The State of nationality (or State of habitual residence for stateless persons) of either the offender or the victim should play a more prominent role. Furthermore, issues relating to potential conflicts of jurisdiction and the collection and preservation of evidence would have to be resolved.

7. The principle of *aut dedere aut judicare* clearly applied to United Nations officials and experts on mission and required further study. Neither the international courts nor hybrid tribunals should have jurisdiction in criminal cases involving such officials or experts.

8. The Committee should take a cautious approach to the question of whether materials obtained during administrative investigations could be used as evidence in criminal proceedings. Such materials might serve to trigger criminal proceedings or to give a better understanding of events, but actual criminal investigations should remain the prerogative of the State (without precluding the possibility of joint or independent investigations by United Nations investigators under their own mandates). The need to combat crime was no reason to enhance the powers of the Secretariat's administrative divisions.

9. The Secretariat's note (A/62/329) contained a number of useful ideas. Some of the proposed short-term measures could be approved after further work. The Sixth Committee must not, however, interfere with

the work of the Special Committee on Peacekeeping Operations, which dealt with issues relating to military and police peacekeeping personnel.

10. **Mr. Baghaei Hamaneh** (Islamic Republic of Iran) said that his delegation attached great importance to the work of the Ad Hoc Committee on criminal accountability of United Nations officials and experts on mission in its effort to promote the rule of law and accountability by identifying measures to bring the perpetrators of sexual exploitation and abuse to justice, thereby safeguarding the integrity and credibility of the Organization. It was incumbent on the United Nations and its Member States to ensure that the reputation of peacekeeping operations and the sacrifices of their personnel were not undermined by the criminal misconduct of a few individuals. Adherence to a zero tolerance policy would require closing the existing jurisdictional gaps so that such crimes could be prosecuted.

11. His delegation welcomed the recommendations made by the Group of Legal Experts established pursuant to General Assembly resolution 59/300 (A/60/980) and the note by the Secretariat on the criminal accountability of United Nations officials and experts on mission (A/62/329). It supported the comprehensive approach adopted by the Group; the proposed mechanisms should apply to the widest possible range of United Nations personnel and staff assigned to peacekeeping operations or working in the mission area, except for national military contingents under the exclusive jurisdiction of the sending States. Furthermore, the new mechanisms should cover not only sexual exploitation and abuse, but other forms of serious criminal misconduct such as theft, corruption, bribery and money-laundering. A combined generic and enumerative approach would be a feasible way of identifying a broad range of crimes that might be perpetrated by United Nations personnel.

12. According to the principle of territoriality, the host State should have the primary jurisdiction over crimes committed by United Nations personnel and staff in the mission area, and its laws should be the primary basis for defining such acts. Although the host State's judicial system might suffer from some deficiencies at the early stages of the post-conflict period, it should be given the opportunity to upgrade its overall capacity to assert jurisdiction and should be assisted in that regard. Other States should also be entitled to establish criminal jurisdiction on the basis of the passive and active personality principles. In order to close any jurisdictional gap, Member States should be required to exercise jurisdiction over alleged offenders who were present in their territory and whom they did not intend to extradite.

13. His delegation noted with interest the proposal to develop a convention comprising all the aforementioned elements as a long-term solution. However, as many States considered such an endeavour to be premature or unnecessary at the current stage, short-term measures should be adopted. All the measures mentioned in section III of the note by the Secretariat had merit; of particular interest, in order to highlight Member States' responsibility to hold their nationals accountable for crimes committed while on mission, were the proposals to include appropriate language in the memorandum of understanding developed between the United Nations and a contributing Member State (para. 24 (b)) and to adopt a General Assembly resolution strongly urging Member States to establish jurisdiction over their nationals who committed serious crimes as defined in their domestic criminal law, where that conduct also constituted a crime under the laws of the host State (para. 21).

14. Criminal accountability of United Nations personnel on peacekeeping missions was a cross-cutting issue related to the whole question of the reform of the Organization. It was high time for the United Nations, with the help of its Member States, to practice what it preached: to promote the rule of law and prevent impunity by holding peacekeeping personnel accountable for their criminal conduct.

15. **Mr. Charles** (Trinidad and Tobago) said that his Government was committed to the principle that no one was above the law and that all individuals should be held accountable for their crimes, committed within their State of origin or elsewhere. As responsible members of the international community, Member States needed to close the jurisdictional gap that made it difficult to bring perpetrators to justice if the host State was unable to prosecute or the State of origin did not extend its criminal jurisdiction to crimes committed by its nationals outside its territory.

16. His delegation found merit in the short-term measures proposed by the Secretariat; the proposal that the General Assembly should adopt a resolution requiring Member States to establish jurisdiction over their nationals who committed an offence that was

established in both their own domestic law and that of the host State was similar to the principle of dual criminality with regard to the obligations of States parties to a bilateral extradition agreement.

17. There was a need for legal certainty in order to establish a common set of rules that would be acceptable to all Member States, whatever their domestic legal system. In the long term, therefore, a comprehensive convention should be elaborated in order to eradicate impunity by covering all crimes committed by United Nations personnel and experts on missions, with the exception of military members of national contingents. Such an instrument would demonstrate the Organization's commitment to the rule of law and strengthen its moral authority at the international level.

18. **Ms. Nworgu** (Nigeria) said that, as a major troop contributor and an active participant in United Nations peacekeeping operations, Nigeria was committed to ensuring that the original intent of the Charter of the United Nations was maintained and that United Nations staff and experts on mission were neither exempt from the consequences of any criminal acts that they committed nor unjustly penalized. She endorsed the zero tolerance policy for addressing any sexual exploitation or abuse by peacekeeping personnel. Impunity, if not stamped out, could become one of the gravest dangers to international peace and security.

19. The host State was the most naturally qualified party to exercise jurisdiction. The crimes were committed in its territory and, in most cases, against its citizens; its laws were the ones that had been broken and the evidence needed for prosecution was available. If special circumstances made the host State unable to exercise jurisdiction, the State of nationality could do so, provided that the relevant requirements, including the enactment of extraterritorial laws and procedures, were met; the United Nations should therefore encourage Member States to enact laws for that purpose.

20. Several legal systems, including that of Nigeria, gave little weight to evidence obtained through an administrative process and could not use it as a basis for criminal investigations. It was therefore necessary to strengthen the Organization's capacity to conduct investigations and collect evidence in a manner that would enhance the likelihood of its subsequent admissibility in national criminal proceedings.

21. In considering extension of the scope of application *ratione materiae* to a broader range of crimes, a distinction should be drawn between crimes committed against the general populace, which attracted the most negative attention and could damage the integrity of the United Nations, and those committed against the Organization itself.

22. Her delegation welcomed the recommendations of the Group of Legal Experts regarding predeployment awareness training and in-mission induction training of peacekeeping personnel, closer coordination among United Nations units in order to ensure that criminal investigations were not compromised, support for victim and witness protection, and mechanisms to ensure that the interests of alleged offenders were protected. It was pleased that a victims assistance policy was under consideration by the Special Committee on Peacekeeping Operations and that standard operating procedures were being developed. The question of the elaboration of a convention should be given further consideration.

23. **Mr. Mikanagi** (Japan) said that, while the discussion in the Ad Hoc Committee had remained at the stage of a preliminary exchange of views, it had been useful in deepening delegations' understanding of the issues. The approach taken by the Secretariat in proposing short- and long-term solutions seemed appropriate. In order to proceed, the Committee needed to examine information on actual crimes committed by United Nations officials and experts on mission and to study the existing legal framework in order to decide what kind of legal system was needed in the longer term.

The meeting rose at 3.40 p.m.